# Restrictive Covenants Stubbornly Stay on the Books

By MOTOKO RICH

**RICHMOND,** Va. -Nealie Pitts was shopping for a house for her son three years ago when she spotted a for-sale sign in front of a modest brick bungalow here. When she stopped to ask the owner about it, at fIrst she thought she misheard his answer.

"This house is going to be sold to whites only," said the owner, Rufus Matthews, according to court papers filed by Ms. Pitts, who is African-American. "It's not for colored."

Mr. Matthews later testified before the Virginia Fair Housing Board that he believed a clause in his deed prohibited him from selling to a black buyer. A 1944 deed on his property restricts owners from selling to "any person not of the Caucasian race."

Such clauses have been unenforceable for nearly 60 years. But historians who track such things say that thousands of racist deed restrictions, as well as restrictive covenants governing homeowner associations, survive in communities across the country.

Now, a handful of critics say it is time to wipe the covenants off the books. This month, the Missouri Senate passed a bill that would require homeowner associations to strike any racist language from covenants. In Virginia, Constance Chamberlin, president of Housing Opportunities Made Equal, a nonprofit group, is supporting a statewide cleanup of the anachronistic covenants.

The group has also joined a housing discrimination suit brought against Mr. Matthews by the Virginia state attorney general's office and Ms. Pitts.

Ms. Pitts, 56, said she had never heard of the deed restrictions before Mr. Matthews invoked them. But "anyone that has a TV, a radio or just communicates with people knows that the law has changed," she said.

The Supreme Court ruled against racially restrictive covenants in 1948, and they were outlawed by the federal Fair Housing Act of 1968. But because so many of them remain in deeds and neighborhood bylaws, some states, including California, have moved to eliminate them. Advocates for their removal reason that the restrictions, even if illegal, provide justification for subtle racism -or, as in Mr. Matthews's case, outright discrimination. (Mr. Matthews declined to comment.)

Evan McKenzie, a professor of political science at the University of Illinois at Chicago who has written about restrictive covenants in homeowner associations, said: "While the covenants are there, there is still room for people to think that although it cannot be legally enforced it is none-the-less a promise that they are morally obligated to keep. And that's an argument in my view for removing them."

In the early part of the 20th century, cities and towns used zoning to restrict African-Americans and ethnic minorities to certain neighborhoods. The Supreme Court ruled such zoning unconstitutional in 1917, so developers and neighborhood associations started inserting clauses in their bylaws and deeds. The clauses linger in such varied communities as Kansas City, Mo.; St., Petersburg, Fla.; and Chappaqua, N.Y.

Homeowners are often not aware that they exist, because title searches don't go back far enough, or real estate lawyers or title companies strike them out. Homeowners who do know about them figure that because the covenants are unenforceable, they can do no harm.

State Senator Yvonne S. Wilson, Democrat of Kansas City, argues for a more forceful approach. She sponsored a bill to remove race and ethnic restrictions from an estimated 1,200 covenants in Missouri - affecting renters and buyers alike - within 30 days of a complaint. The bill, which passed this month after the issue was covered in the local news media, is now before the state House. It would "help these associations deal with what many of them have described as an embarrassment," she said.

Until now, arcane rules have made it difficult to change covenants, which also regulate things like fence height and porch projection. John Sheets, the executive director of the Homes Associations of the Country Club District, an umbrella organization that manages 41 associations representing 22,000 homes in the Kansas City metropolitan area, said the covenants require a majority of the owners to approve any changes in notarized votes. Conducting such polls, he said, could cost thousands of dollars, and associations often don't want to spend the money.

Such an explanation did not satisfy Marsha Ramsey, who owns a

house in one of the associations managed by Mr. Sheets.

Last summer Ms. Ramsey asked to see the covenants because she was considering installing a pool. As she flipped through them, she recalled, "my heart just kind of stopped" at a section headed in bold print: "Ownership by Negroes Prohibited."

Ms. Ramsey, who is white, called Mr. Sheets, who told her the clauses could not be removed without the approval of her neighbors. "You think, my God, this is 2005," she said, "and we have to have people sign to get verbiage taken out that's already illegal?" The Missouri bill would authorize homeowner association boards to remove the clauses without a majority vote among residents.

In Westchester County, N.Y., where restrictive clauses in deeds were once commonplace, some title companies simply suppress them during title searches. "If we see a racially restrictive covenant, we wouldn't even show it to the buyer," said Michael Berey, a senior vice president at First American Title Insurance Company of New York, which issued 38,152 title policies last year.

While recently researching the title on a house in Chappaqua, Alan Lichtenstein, a real estate lawyer, unearthed a covenant saying, "No persons of any race other than the Caucasian race shall use or occupy any buildings or lot." A title company had redacted it, but it was still on file at the county recorder's office.

Once the clauses are removed, it is important to keep a historic record of them, said Sandra Stites, an obstetrician who lives in a Kansas City house governed by covenants containing racist language. "We know this horrific history existed, and it should never have happened and it should never happen again," she said.

Dr. Stites, who is African-American, said she wants her three children to understand their country's past. "If we're not aware that this did happen, we could go backwards," she said.

Sometimes even if the language is removed, its legacy endures. The racist clause in the original deed to Mr. Matthews's house did not appear in the deed that conveyed the property to him, but in his testimony before the Virginia Fair Housing Board he said his neighbors told him the area was zoned "for whites only."

Ms. Pitts said she had yet to recover from the pain of her encounter with Mr. Matthews in his front yard three years ago. She said she had seen a doctor because of stress-related ailments, agonizing over the slow progress of an investigation by the Fair Housing Board. "I really was not sure if anyone was going to listen to me," Ms. Pitts said during an intermission at a board hearing on April 13.

At that hearing, Ms. Pitts learned that the state attorney general's office had offered to settle its case against Mr. Matthews by sending him for two hours of fair housing training in Richmond.

Ms. Pitts said she was stunned by the settlement proposal. "It's less than a slap on the wrist," she said. "It takes me to the back of the bus," she added. "Again, I'm looking at the white and colored water fountains."

The board voted, 7 to 2, to reject the settlement. The case will proceed in circuit court in Chesterfield County.

Mr. Matthews, a 67-year-old retired construction worker who pulled his house off the market shortly after Ms. Pitts filed her complaint, refused to comment. In a brief conversation outside his home last week, he said, "I don't want nothing about what I say in the newspaper." His lawyer, Robert B. Brown, reached by telephone, said he was withdrawing from the case.

Although Ms. Pitts was able to move her son and his family into a rental property she and her husband, James, own, she said that perhaps the most fitting conclusion would be for Mr. Matthews to simply give his house to her. "I'd like to integrate the neighborhood," she said.

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